IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.Nos.25927 and 25928 of 2017
and
W.M.P.No.27475 and 27476 of 2017

M/s.Rajalakshmi Paper Agencies
Rep.by its Proprietor Mr.P.Rajesh
... Petitioner in both W.Ps

Vs.

The Assistant Commissioner (CT)
Kothawalchavadi Assessment Circle
Chennai – 600 001.
... Respondent in WP.No.25927/2017

The Commercial Tax Officer
Kothawalchavadi Assessment Circle
Chennai – 600 001.
... Respondent in WP.No.25928/2017

Prayer:
In WP.No.25927/2017

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent pursuant to his proceedings in CST 92131/2014-15 dated 31.08.2017 served on 05.09.2017 and quash the same as invalid and illegal.

In WP.No.25928/2017

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent pursuant to his proceedings in CST 92131/2013-14 dated 31.08.2017 served on 05.09.2017 and quash the same as invalid and illegal.

For Petitioner in both W.Ps. : Mr.S.Mohan

For Respondent in both W.Ps. : Mr.S.Kanmani Annamalai, Additional Government Pleader

COMMON ORDER

Heard Mr.S.Mohan, the learned counsel appearing for the petitioner and Mr.S. Kanmani Annamalai, learned Additional Government Pleader, who accepts notice on behalf of the respondent. With consent on either side, the Writ Petitions are taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of Tamil Nadu Value Added Tax Act 2006 (hereinafter, referred to as 'TNVAT Act') and Central Sales Tax Act 1956 (hereinafter, referred to as 'CST Act') has filed these Writ Petitions, challenging the orders of assessment under CST Act for the years 2014-2015 / 2013-2014 respectively, dated 31.08.2017.

3. The respondent issued show cause notices, dated 23.06.2017, alleging that the petitioner has suppressed the transit sales turnover, and based on the value declared in 'E1' Forms, the transit sales turnover was proposed to be estimated, and assessed to tax. Another allegation against the petitioner is that, a perusal of 'C'-Form filed by the petitioner revealed that, they have collected tax at the rate of 2% on three invoices from the buyers, and claimed exemption under Section 6 (2) of the CST Act, and the exemption already allowed on the turnover is proposed to be assessed to tax at 2%. Apart from the above allegations, there was a proposal to levy penalty under Section 9(2) of the CST Act.\

3.1 The petitioner filed their objections/reply, on 10.07.2017. The gist of the objections is that, whatever sales, effected by them through transit sales, the same were duly admitted in their returns, and the other turnover, which was not reported in the return as transit sales, the entire tax liability has been remitted by them, and the same shown in the returns, and assessment have been completed. In this regard, the petitioner undertook to produce the entire records for the turnover admitted in the returns and to show that the tax was already paid. Therefore, it was contended that, there cannot be any further assessment in respect of the turnover and consequently, levy of tax is not warranted.

3.2 So far as the allegation that they have collected tax at 2% on the sales turnover from the buyers and claimed exemption under Section 6(2) of the CST Act is concerned, it was submitted that the allegation is false and they have submitted declaration Forms issued by the buyers in order to set the records straight. Therefore, the petitioner denied that they have claimed exemption wrongly under Section 6

(2) of the CST Act. The petitioner specifically requested that, they may be given an opportunity of being heard before passing further orders. The petitioner received the notices dated 11.08.2017 on 23.08.2017, at about 1.45 p.m. from which, the petitioner came to know that the personal hearing was fixed on 23.08.2017 at 11.00 a.m. Therefore, the petitioner would state that they could not appear before the respondent at 11.00 a.m. since the notice was received by them only at 1.45 p.m. In the affidavits, filed in support of these Writ Petitions, it has been stated that the petitioner requested the respondent either to reschedule the hearing date to another date and to give one more opportunity, and that, the respondent acknowledged that the notice was served on them only about 1.45 p.m.

4. From a perusal of the impugned orders, it is seen that the respondent did not specifically fix another date for personal hearing, and without granting an opportunity of being heard, has proceeded to complete the assessment, by stating that the petitioner did not appear for personal hearing.

5. Thus, from perusal of the impugned assessment orders, it is seen that the respondent does not seriously dispute the fact that the notice of hearing was received by the petitioner only on 23.08.2017 at about 1.45 p.m. Therefore, the respondent could have either issued another notice or directed the petitioner to appear before him on a particular date, so that the petitioner would be able to produce records to substantiate their stand in their reply, dated 10.07.2017. With regard to the merits of the matter, the respondent has found fault with the petitioner in having produced the letter from the buyers, rectifying the defects in Form C. The petitioner explained that the defect has occurred on account of the purchasing dealer, and it is they, who have to rectify the defect. In that regard, the petitioner produced a letter from the dealer. Further, the petitioner explained that, however, had opportunity been granted to them, they would have been in a position to produce records to show that, whatever turnover, which was not reported in the return as transit sale, were assessed to tax and requisite amount of tax has already been paid.

6. Thus, the factual situation clearly shows that, there has been violation of principles of natural justice, and the petitioner did not have adequate opportunity to putforth their plea in spite of specific request made to the respondent for being heard in person. This Court is convinced that the matter should be remitted back to the Assessing Officer for redoing the assessment in accordance with law.

7. In the result, the Writ Petitions are allowed, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration, who shall fix a date for personal hearing and hear the petitioner in person and peruse the records and redo the assessment in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sd/kas

To

1. The Assistant Commissioner (CT)
   Kothawalchavadi Assessment Circle
   Chennai - 600 001.

2. The Commercial Tax Officer
   Kothawalchavadi Assessment Circle
   Chennai - 600 001.

+2cc to Mr.V.Vasantha Kumar, Advocate SR. 71291. 71292
+1cc to the Special Government Pleader Sr. 71310

W.P.Nos.25927 and 25928 of 2017

AR(IV)
VR(24/10/2017)